

# **EXHIBIT 20**

US District Court - Delaware  
Chapter 11 - W.R. Grace

FINAL - October 19, 2007  
David Austern

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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CHAPTER 11

IN RE:

W.R. GRACE & CO., et al.,  
Debtors.

Case No. 01-1139 (JFK)

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DEPOSITION OF:

David Austern

October 19, 2007

Washington, D.C.

Lead: John Donley, Esquire

Firm: Kirkland & Ellis LLP

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1 diagnosed as malignancies, or they are not.  
2 The pathology is pathology. And in the  
3 reading of X-rays, however, there are -- it  
4 is a subjective decision-making function,  
5 particularly with respect to soft tissue,  
6 which the lungs are.

7 And different people are going  
8 to see different things in X-rays.

9 **Q After the '95 TDP was**  
10 **implemented, did you see an upsurge of**  
11 **claims in the late '90s?**

12 A We certainly did.

13 **Q Beyond what you would have**  
14 **expected to see?**

15 A Well, beyond what our future  
16 claims forecaster said we would see.

17 **Q And was the bulk of the upsurge**  
18 **in non-malignant claims?**

19 A Yes.

20 **Q Was the bulk of those in**  
21 **unimpaired asbestosis claims?**

22 A Yes.

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1           **Q Did that raise concerns in your**  
2           **mind about possible manipulation of claims**  
3           **being submitted?**

4           A I knew there were screenings,  
5           and I knew we were accepting a lot of what  
6           I would call low dosage, low exposure, low  
7           parenchymal changes, claims.

8           **Q Did you yourself conclude in**  
9           **the late '90s that there was -- in your**  
10          **words -- an amazing elasticity on the part**  
11          **of claimants' lawyers to find doctors who**  
12          **would say that someone suffers from minimal**  
13          **asbestos-related disease?**

14          A I certainly said that.

15          **Q We may as well mark it.**

16                **(Exhibit 28, August 13, 1998**  
17                **article by David Austern, from the**  
18                **Dallas Observer, is marked by the**  
19                **reporter for identification.)**

20          **Q Exhibit 28, I have marked as a**  
21          **copy of the August 13, 1998 article from**  
22          **the Dallas Observer. And page eight is**

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1       **where there appears to be a quote from you,**  
2       **Mr. Austern.**

3               **In general, do you recall this**  
4       **article running in the Dallas Observer?**

5               A    I do.

6               Q    In 1998?

7               A    Yes.

8               Q    The subject -- we won't go into  
9       **any detail -- is mainly about the Baron &**  
10       **Budd firm and some activities there.**

11              Do you recall that?

12              A    I do.

13              Q    And on page eight, were you  
14       **quoted accurately as stating, quote:**

15              **"Part of the problem was sort**  
16       **of an amazing elasticity -- which is about**  
17       **as calm a word as I can think of -- on the**  
18       **part of plaintiffs' lawyers to find doctors**  
19       **who will say that somebody suffers from**  
20       **minimal asbestosis disease."**

21              A    I think I said "benign," but,  
22       yes.

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1           **Q   Okay.**

2           MR. MULLADY: John, can I ask  
3           whether the emphasis on some of the  
4           words in that sentence was supplied by  
5           you, or does -- that just appears in  
6           the article as published?

7           MR. DONLEY: It appeared on the  
8           printout from whatever database  
9           provided this article. I don't know  
10          if it's in the original. It may have  
11          been italics in the original.

12          The short answer is, I don't  
13          know. We did not add to it.

14          MR. FINCH: A "key word" search  
15          function.

16          MR. MULLADY: That is what it  
17          appears to me to be.

18          MR. FINCH: Someone typed in  
19          and generated that.

20          MR. DONLEY: It may be. The  
21          emphasis is not important to me  
22          anyway.

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1 MR. MULLADY: It isn't at the  
2 moment.

3 MR. DONLEY: All right.

4 Q Did we establish, with the use  
5 of the word "benign," that that was  
6 an accurate quote?

7 A Yes.

8 Q In your experience and  
9 observations, were there at least some  
10 claims or facilities where there was a less  
11 than benign explanation for the elasticity  
12 you were seeing?

13 A No, no, because there were  
14 B-readers out there who looked at X-rays  
15 and reached judgments that people had  
16 parenchymal changes or scarring of the  
17 lungs. There were plenty of X-ray readers.

18 Q All right. The next -- the  
19 next paragraph, could you read that to  
20 yourself and let me know if that appears to  
21 be an accurate quote?

22 A This is an accurate quote.

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1           **Q**   The bulk of the problem was  
2           with non-disabling asbestosis claims,  
3           correct?

4           A   Yes.

5           **Q**   Okay. I would like to look at  
6           some of the claim numbers coming in in the  
7           late '90s and start with what I have marked  
8           as Exhibit 29.

9                   (Exhibit 29, February 28, 1997  
10           letter, Summary Report, to Judges  
11           Weinstein and Lifland reporting on  
12           1996 activities at the Trust, First  
13           Four Pages, is marked by the reporter  
14           for identification.)

15           **Q**   This is a February 28, 1997  
16           letter to Judges Weinstein and Lifland  
17           reporting on 1996 activities at the Trust.  
18           It's only the first four pages because  
19           that's all we had. And I will make a  
20           request on the record for a complete copy  
21           from the Trust. We will follow up with  
22           counsel separately on that.



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1 MR. DONLEY: Sure, we will  
2 include the whole thing.

3 **Q Does the increase in claims**  
4 **reflect that fear coming true?**

5 **It's not a continuous upsurge,**  
6 **but does it reflect that fear?**

7 A Yes, but not just Category III,  
8 which is the reference.

9 MR. FINCH: Objection.

10 **Q Let me simplify the question.**  
11 **Did you have a concern about**  
12 **the upsurge of unimpaired asbestosis**  
13 **claims, whatever category they were in, in**  
14 **the late '90s?**

15 A Yes.

16 **Q And what was that concern?**

17 A Well, actually, I was more  
18 concerned about Category II, but -- and  
19 that was that, if you could get an  
20 affirmative X-ray reading for scarring of  
21 the lungs, then the rest of the medical  
22 criteria were not as extensive as I would

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1 want them, mostly for Category II, but not  
2 as extensive as I would want them.

3 And I was worried that we would  
4 get a big increase in -- in my case,  
5 Category II claims. And we did.

6 **Q And you did?**

7 A And we did.

8 **Q Was the increase in claim**  
9 **volume that you saw in the period after the**  
10 **'95 TDP was enacted, was it accompanied by**  
11 **a deterioration in claim quality?**

12 MR. MULLADY: Objection to the  
13 form.

14 A I'm not sure I know what you  
15 mean by "deterioration."

16 **Q A decline in the quality of the**  
17 **proofs submitted in support of the claim.**

18 A Yes.

19 **Q Let me show you a couple of**  
20 **documents and see if you agree with these.**

21 A We are done with 10 here?

22 **Q Yes.**

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1           **Q** And with regard to specific  
2           numbers provided in the next paragraph,  
3           it's reported that about 91,000 new claims  
4           were filed in 2001.

5           Do you see that?

6           A Yes.

7           **Q** That's a 54 percent increase  
8           over the prior year with about 59,000  
9           claims then.

10          Do you see that?

11          A Yes.

12          **Q** And a further -- and that  
13          number had -- itself had represented an  
14          84 percent increase over 1999, correct?

15          A Correct.

16          **Q** And in the preceding -- the end  
17          of the preceding paragraph, the  
18          announcement or report states that:

19                 "Claim filings have been  
20                 increasing since 1999 at an alarming rate,"  
21                 quote-unquote.

22          A That's correct.

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1           **Q   Were unexpectedly high**  
2           **non-malignant claims once again principally**  
3           **responsible for this alarming increase?**

4           A   I think they were totally  
5           responsible.

6           **Q   And did you form any conclusion**  
7           **about why, in 1999 through 2001, these**  
8           **unprecedented increases were occurring?**

9           A   No. We were just getting more  
10          non-malignant filings.

11          **Q   Did you understand that similar**  
12          **increases were being seen by all trusts**  
13          **generally in the tort system?**

14          A   Yes.

15          MR. MULLADY: Objection.  
16          Foundation.

17          **Q   Is that something you monitored**  
18          **from time to time?**

19          A   We monitored the trusts. We  
20          didn't monitor the tort system.

21          **Q   Okay. You recall that -- I**  
22          **think you once used the phrase, that the**

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1           **Q   And is that increase**  
2           **principally attributable to the surge in**  
3           **claims received prior to the December 2,**  
4           **1996 TDP documentation requirements?**

5           MR. FINCH: Objection.  
6           Foundation.

7           MR. MULLADY: Objection. Calls  
8           for speculation.

9           **Q   I'm sorry.**

10          A   I don't know. I assume it was.  
11          I don't know.

12          **Q   Okay. Is that at least a**  
13          **factor in the size of the 1996 filings?**

14          MR. MULLADY: Objection. Calls  
15          for speculation.

16          A   Again, I just don't know.

17          **Q   If we look at the size of the**  
18          **bar prior to the 2002 TDP and after the**  
19          **2002 TDP, on that same chart, there's a big**  
20          **drop-off from before to after, correct?**

21          A   Yes.

22          **Q   And did you attribute that to**

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1 people were -- knowing they couldn't --  
2 knowing they shouldn't file from October to  
3 December, I don't know what that did to  
4 gear people up.

5 **Q On the next page, which has**  
6 **page two at the bottom right, the upper**  
7 **chart that is entitled, "Manville Personal**  
8 **Injury Settlement Trust Claim Facts and**  
9 **Figures -- Claim Filings."**

10 **Do you see that?**

11 A Yes.

12 **Q And there, the bar representing**  
13 **claims filed pursuant to the 1995 TDP has**  
14 **roughly 89 percent non-malignant claims as**  
15 **part of that bar, compared to roughly**  
16 **61 percent under the 2002 TDP?**

17 A Correct.

18 **Q And in your experience as chief**  
19 **executive officer of the CRMC, what do you**  
20 **attribute that difference to?**

21 A Well, first of all, it speaks  
22 for itself. It's a dramatic increase in

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1 non-malignant filings, but I think that is  
2 also because it's more difficult to file  
3 non-malignant filings, because -- which is  
4 to say, that causation and exposure  
5 requirements have increased.

6 And I might say the scheduled  
7 values are also less, so there is less  
8 incentive to file, no matter what the  
9 criteria are.

10 **Q You don't have any information**  
11 **to suggest that the difference between**  
12 **those -- the ratios in those two bars is**  
13 **attributed to some difference in the**  
14 **underlying incidence of disease, for the**  
15 **different diseases whose ratio is expressed**  
16 **there?**

17 **A As far as I know, there is no**  
18 **difference.**

19 **Q Does that tell us that the main**  
20 **factor driving how many claims get filed**  
21 **and approved at any given point are how**  
22 **tight or relaxed the medical exposure**